

Exhibit “A”

Affidavit of Samuel Englehardt, M.D.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

DEBRA JOYCE CLACKLER, #159516,

Plaintiff,

v.

**GLADYS DEESE, FRANK ALBRIGHT
and DR. SAMUEL ENGLEHARDT,**

Defendants.

**CIVIL ACTION NO.
2:06-CV-172-WHA**

AFFIDAVIT OF SAMUEL ENGLEHARDT, M.D.

STATE OF ALABAMA

COUNTY OF MONTGOMERY

Before me, the undersigned Notary Public, personally appeared SAMUEL ENGLEHARDT, M.D. who, after being duly sworn, states as follows:

1. My name is Samuel Englehardt, M.D. I am over the age of nineteen (19) years and have personal knowledge of the information contained in this affidavit.

2. I am a licensed physician in the state of Alabama. I am currently employed as a physician at Julia Tutwiler Prison for Women ("Tutwiler").

3. Deborah Clackler ("Clackler") is an inmate currently incarcerated at Tutwiler.

4. On April 22, 2004, Clackler submitted a sick call request form and first complained of pain in her left side. (PHS0172). At this time, she was seen by a nurse and scheduled to see a physician. (Id.).

5. On April 26, 2004, I evaluated Clackler. (PHS0096; PHS0111). Clackler claimed to have developed a lump in her left side and stated that she had a pulling sensation in the upper quadrant of her stomach, both of which had caused her pain for several days. (Id.).

After a thorough assessment of Clackler, I determined that she had a lipoma approximately four to five centimeters in diameter. (Id.).

6. A lipoma is benign tumor composed of mature fat cells, which may occur in any tissue that contains fat. Lipomas are very common soft tissue lesions and are the most common type of non-cancerous, soft tissue growth. The cause of a lipoma is not completely understood, although development of a lipoma appears to be an inherited condition. Lipomas are typically: small (a few centimeters in diameter); located beneath the skin; movable; soft and rubbery in consistency; do not cause pain; and remain the same size over years or grow very slowly. A lipoma is not a life-threatening condition and no harm will result if a lipoma is left untreated. The most bothersome symptom associated with lipoma is the location or increased size that makes the lipoma noticeable by other individuals.

7. During my April 26, 2004, evaluation of Clackler, her lipoma was not serious and posed no risk to her health; however, I made a notation to follow the status of the lipoma and re-evaluate Clackler in four weeks. (PHS0096; PHS0111).

8. On May 21, 2004, Clackler submitted a sick call request form complaining of pain in her left side and stomach, nausea and vomiting. (PHS0170). On this same day, I entered an order for Clackler to receive Phenergan (which is used to reduce and/or prevent nausea, vomiting and stomach pains) and clear liquids for twenty-four hours. (PHS0096; PHS0169). Additionally, on May 24, 2004, orders were entered for Clackler to receive Tylenol (which is used, among other things, to relieve pain) and Donnatal (which is used to relax the muscles in the bladder and intestines as well as reduce stomach acid but can cause some nausea, vomiting and constipation). (PHS0096).

9. On May 25, 2004, Clackler was seen by a nurse practitioner after complaining of pain in the left quadrant of her abdomen. (PHS0110). The nurse practitioner determined that Clackler had low grade gastritis (an inflammation of the stomach causing nausea, pain, vomiting, diarrhea and/or constipation). (Id.). Clackler was ordered to continue her prescription of Tylenol and Donnatal and instructed to return to the infirmary as needed. (PHS0110).

10. On June 21, 2004, July 14, 2004, and July 16, 2004, Clackler submitted sick call request forms or otherwise visited the infirmary, complaining of abdominal pain, nausea and diarrhea. (PHS0166; PHS0167; PHS0168). Clackler was evaluated and instructed to continue taking Tylenol and Donnatal and encouraged to continue consuming sufficient fluids. (PHS0166; PHS0167; PHS0168). Additionally, Clackler received a prescription for Zantac (which is used to reduce the amount of acid produced by the stomach).

11. On July 17 and 21, 2004, I entered orders for Clackler to receive Magnesium Citrate (which is used as a dietary supplement and as a laxative to promote bowel movements), Colace (which is a laxative or stool softener used to promote bowel movements) and Zantac to provide additional relief for her abdominal and stomach pain, nausea and diarrhea and/or constipation. (PHS0095).

12. On August 16, 2004, Clackler submitted a sick call request form complaining of constipation, bloating and abdominal pain. (PHS0165). At this time, Clackler was prescribed Dulcolax (which is a laxative or stool softener used to promote bowel movements) and Colace. (Id.).

13. On August 18, 2004, Clackler complained of pains and cramping after eating. (PHS0095; PHS0109). At this time, I ordered a test to determine Clackler's levels of Amylase and Lipase (fluids which reveal whether an individual has pancreatitis). (Id.). Clackler was also

given dietary instructions to eat slowly and reduce her intake of carbonated beverages. (*Id.*). In addition, I prescribed Clackler Bentyl (which is used relieve spasms and pains in the gastrointestinal tract—stomach and intestines) and Zantac. (*Id.*).

14. On September 2, 2004, Clackler was prescribed Reglan (which is used to reduce and/or prevent nausea). (PHS0095; PHS0108).

15. On September 5, 2004, Clackler submitted a sick call request form complaining of abdominal pain in her left side. At this time, Clackler was given a laxative to promote bowel movements and scheduled to see a physician. (PHS0164). The following day, I entered an order for Clackler to receive Dulcolax. (PHS0094; PHS0108).

16. On September 6, 2005, I interpreted the results of Clacker's Amylase and Lipase test, which revealed that Clackler's levels for each were well within the normal range. (PHS0108). The results of Clackler's urine culture and sensitivity test, which revealed that she had a urinary tract infection. (*Id.*). On September 7, 2004, I entered additional orders to treat Clackler's urinary tract infection by prescribing her Amoxicillin (an antibiotic used to treat different types of infections). (PHS0094; PHS0108).

17. On September 13, 2004, I did a follow-up evaluation of Clackler and ordered her to complete her prescription of Amoxicillin (in order to resolve her urinary tract infection) and to see me as needed. (PHS0108).

18. On September 17, 18 and 19, 2004, Clackler submitted sick call request forms or otherwise visited the infirmary, complaining of symptoms related to her urinary tract infection. (PHS0163; PHS0162; PHS0093). At this time, I ordered Clackler to increase her intake of water and prescribed Pyridium (which is used to relieve pain, burning and discomfort caused by infection or irritation of the urinary tract), Motrin (which is used to reduce fever, pain,

inflammation and stiffness caused by various medical conditions) and Macrochantin (which is an antibiotic used to fight bacteria and to treat urinary tract infections) to treat and relieve the discomfort of Clackler's urinary tract infection. (Id.).

19. On October 10, 2004, Clackler submitted a sick call request form complaining of pain in her abdomen and constipation. (PHS0161). On October 11, 2004, I prescribed Clackler Colace and Magnesium Citrate, to promote bowel movements and relieve any problems Clackler was having with constipation. (PHS0092).

20. On or about October 18, 2004, Clackler was transferred to the South Louisiana Correctional Center ("SLCC") where Louisiana Correctional Services, Inc. ("LSC") provided Clackler with medical care. (PHS0383; PHS0375; PHS0386; PHS0392). I did not order or participate in any way in the transfer of Clackler from Tutwiler to LSCC.

21. On November 11, 2004, Clackler submitted a sick call request form to LSC, complaining of pain in her left side; however, when a physician attempted to treat her, Clackler refused all medications. (PHS0384).

22. On November 21, 2004, LCS diagnosed Clackler as having a lipoma on her left side. (PHS0377). On or about November 24, 2004, Clackler submitted a sick call request form, requesting to see an outside doctor to surgically remove her lipoma. (PHS0382).

23. On or about January 19, 2005, Clackler complained of pain in her side and increasing difficulty with bowel movements. (PHS0393). Upon evaluation, Clackler's lipoma was stated to be approximately "the size of an orange," and the treating physician recommended surgery to remove the lipoma, as Clackler's lipoma had grown during her stay at LSCC. (Id.).

24. During February and March of 2005, Clackler submitted sick call requests forms complaining of pain in her abdomen, constipation and swelling. On each of these visits, Clackler

was immediately treated by the attending medical staff and referred to a physician for a follow-up evaluation. (PHS0379; PHS0377; PHS0378).

25. On March 18, 2005, I ordered Clackler to return from Louisiana. (PHS0092). Clackler's LCS Medical Transfer Summary indicated that she had a lipoma on her left side and was suffering from constipation, which was being treated with Tagamet (which is used to decrease the amount of acid the stomach produces and treat acid reflux and ulcers), Dulcolax and Colace. (PHS0057).

26. At the time of her transfer from LCSS to Tutwiler, Clackler was found to be "stable" and "ok to travel." (Id.).

27. On March 26, 2005, Clackler submitted a sick call request form complaining of pain in her abdomen and sides and stated that she could not have a bowel movement without the assistance of a laxative and was scheduled to see a physician. (PHS0160). On March 28, 2005, I prescribed Clackler Metamucil to promote bowel movements. (PHS0091).

28. On April 4 and 7, 2005, Clackler submitted sick call request forms, complaining of pain in her abdomen and requesting a mammogram. (PHS0158; PHS0159). On April 12, 2005, John Peasant, M.D. ("Dr. Peasant"), a physician formerly employed at Tutwiler, evaluated Clackler. (PHS0091; PHS0109). Dr. Peasant ordered an ultrasound of Clackler's abdomen and pelvis and scheduled Clackler to have a consultation with Daniel M. Daly, M.D. ("Dr. Daly"), a general surgeon practicing with the Montgomery Surgical Associates, P.A., to evaluate the status of Clackler's lipoma and abdominal pain. (Id.). The process of scheduling an inmate for a consultation with a physician (specifically in Clackler's situation, a surgeon) located outside of Tutwiler can take several weeks or months.

29. Subsequently, Clackler continued to complain of abdominal pain, particularly after eating or drinking. (PHS0157). To remedy these pains, Clackler was ordered to receive Metamucil. (PHS0090).

30. On May 16, 2005, Dr. Daly evaluated Clackler and confirmed that she had a left flank lipoma that he intended to remove through outpatient surgery. (PHS0293-0295). Dr. Daly stated that Clackler's right-sided abdominal pain originated just above the umbilicus and radiated toward the right abdomen and right flank. (Id.). Dr. Daly further found that Clackler had a small, incisional hernia at the bottom of her cholecystectomy scar. (Id.). This scar and corresponding hernia were the result of Clackler having a previous surgery to remove her gallbladder in 1988. (PHS0051). Dr. Daly was unable to definitively detect a hernia and stated that he would not explore the area or proceed with a hernia repair, unless Clackler developed a clinically detectable hernia. (PHS0293-0295).

31. On May 17, 2005, I scheduled an appointment for Clackler to see Dr. Daly to remove Clackler's lipoma. (PHS0089). During the interim between the scheduling of this appointment and the actual surgery, Clackler continued to complain of constipation and abdominal pain. (PHS0155; PHS0156). To relieve these pains, I entered orders for Clackler to receive Magnesium Citrate and Zantac and to increase her fluid intake. (PHS0087; PHS0088; PHS0156; PHS0155).

32. On June 16, 2005, Clackler submitted a sick call request form complaining of soreness in her breasts and stating that the fibrocystic cysts in her breast had spread to her underarms. (PHS0153). At this time, Clackler was scheduled to see a physician and have a mammogram. (Id.).

33. On or about June 20, 2005, I decided to limit my activities at Tutwiler to gynecological and obstetric care, and Winfred Williams, M.D. ("Dr. Williams") assumed responsibility for the management of all general medical care for inmates at Tutwiler.

34. On June 20, 2005, Dr. Williams, a physician currently employed at Tutwiler, entered orders for Clackler to have a mammogram. (PHS0087).

35. On June 24, 2005, Dr. Daly performed outpatient surgery on Clackler to remove her lipoma. (PHS0020; PHS0281). The lipoma was successfully removed, and Clackler was prescribed Tylenol for any post-surgical pain and scheduled to have a follow-up evaluation with Dr. Daly in two to three weeks. (Id.).

36. On June 24, 2005, once Clackler returned to Tutwiler after the outpatient surgery to remove her lipoma, Dr. Williams admitted Clackler to the infirmary to be monitored until she recovered from her surgery. (PHS0019). Dr. Williams also entered an order for Clackler to receive Percogesic (which is used to relieve pain). (PHS0019; PHS0151).

37. On June 27, 2005, Dr. Williams evaluated Clackler to review the status of her recovery from the surgical removal of her lipoma. (PHS0010; PHS0073). At this time, Clackler indicated that her pain was minimal. (PHS0010). Dr. Williams prescribed Flagyl (which is an antibiotic used to treat bacteria and infections) and scheduled a follow-up appointment for Clackler to be evaluated with Dr. Daly in two weeks. (Id.; PHS0080).

38. On June 27, 2005, Dr. Williams also scheduled Clackler to have a mammogram. (PHS0080).

39. On June 29, 2005, after Clackler had spent almost a week in the infirmary, she was discharged from the infirmary because the surgical wound resulting from the removal of her lipoma was healing as expected. (PHS0004).

40. On July 1, 2005, Clackler was sent to Elmore Community Hospital to have her scheduled mammogram. (PHS0359). The results of the mammogram indicated that the clusters or masses in Clackler's breasts were benign fibrocystic cysts. (Id.).

41. On July 13, 2005, Clackler returned to Montgomery Surgical Associates, P.A. for her follow-up visit with Dr. Daly. (PHS0278; PHS0395). Dr. Daly evaluated Clackler and determined that the surgical wound resulting from the removal of her lipoma was healing nicely, and Clackler could resume normal activities. (Id.).

42. On July 21, 2005, Clackler submitted a sick call request form complaining of bowel obstruction, abdominal pain, low heart rate, weakness and shortness of breath. (PHS0150). At this time, Clackler was scheduled to see a physician. (Id.).

43. On July 25, 2005, Dr. Williams evaluated Clackler and prescribed Colace, Magnesium Citrate, and Milk of Magnesia (which is a laxative used to promote bowel movements). (PHS0086).

44. On July 29, 2005, Clackler again complained of bowel obstruction, pain in her abdomen, inability to have a bowel movement without a laxative, low heart rate and shortness of breath (PHS0149). On August 1, 2005, Dr. Williams entered orders for Clackler to have a KUB (which is an X-ray of kidneys and bladder) in an effort to help determine the cause of Clackler's pain. (PHS0086).

45. On August 4, 2005, the results of the Clackler's KUB test indicated that there was no evidence of any bowel obstruction or unusual intra-abdominal calcifications. (PHS0358).

46. From August 12 to August 30, 2005, Clackler submitted six sick call request forms complaining of pain in her abdomen, lack of bowel movements absent a laxative, low heart rate and weakness and shortness of breath. (PHS0143; PHS0144; PHS0145; PHS0146;

PHS0147; PHS0148). On each occasion, Clackler was evaluated by medical personnel and scheduled to see a physician. (Id.). On September 7, 2005, Dr. Williams entered orders for Clackler to have an EKG (which is used to determine the status and function of the heart), the results of which were later determined to be normal. (PHS0086).

47. On September 8, 2005, I prescribed Clackler Phenergan and Provera (the latter of which is used to regulate menstruation) in order to reduce and/or prevent Clackler's vaginal bleeding. (PHS0085). On September 24, 2005, Clackler submitted a sick call request form stating that the Provera stopped her vaginal bleeding temporarily, but the bleeding returned after she stopped taking Provera. (PHS0142). At this time, Clackler was prescribed Motrin and scheduled to see a physician. (Id.).

48. On October 5 and 21, 2005, I evaluated Clackler for complaints of constipation and pain in the right, upper quadrant of her stomach. (PHS0085; PHS0107; PHS0140-0141). At this time, I conducted a thorough physical examination of Clackler, performed a pap smear, extracted a cervical culture and conducted a urine culture and sensitivity test. (Id.). I also entered orders for Clackler to receive Milk of Magnesia (PHS0085; PHS0107).

49. On November 3, 2005, Dr. Williams evaluated Clackler for complaints vaginal bleeding, abdominal pain, cramping and swelling in her abdomen and other discomfort related thereto. (PHS0071). Dr. Williams conducted an evaluation of Clackler and determined that her pelvis was normal, noted her abdominal hernia (which may have been causing some of her abdominal pain), ordered a liver function test (the results of which were normal) and ordered a follow evaluation with me to evaluate Clackler's perimenopausal (in the middle of menopause) symptoms. (PHS0085; PHS0106; PHS0305).

50. On November 8, 2005, I evaluated Clackler for her complaint of continued vaginal bleeding. (PHS0085; PHS0105). Clackler's vaginal bleeding was the result of her being in perimenopause. (Id.). I ordered Clackler to receive a pelvic ultrasound, after which consideration of D&C (scraping of the inner-lining of the uterus) could be entertained. (Id.). Additional, I prescribed Provera to control Clackler's vaginal bleeding. (Id.).

51. On December 1, 2005, Clackler submitted a sick call request form, complaining of abdominal and back pain. (PHS0137). Clackler was scheduled to be evaluated by a physician and undergo her scheduled ultrasound. (Id.). On December 6, 2005, a pelvic ultrasound was conducted on Clackler, which indicated that she had a fibroid uterus (which can cause vaginal bleeding). (PHS0357).

52. On December 25 and 27, 2005, Clackler submitted sick call request forms, complaining of abdominal and back pains, constipation, vomiting and swelling. (PHS0135-0136; PHS0134).

53. On December 30, 2005, I conducted an evaluation of Clackler. (PHS0070; PHS0084). She indicated that she had two normal menstrual cycles, indicating that the Provera was working. (Id.). At this time, I prescribed Clackler Metamucil in order to promote bowel movements and relieve any problems she may be having with constipation. (Id.).

54. On January 12 and 14, 2006, Clackler submitted a sick call request form complaining of abdominal and back pain, vaginal pain, nausea and vomiting. (PHS0130-0133). On January 18, 2005, I evaluated Clackler and continued her prescriptions of Provera and Zantac. (PHS0083).

55. On January 31, 2006, I determined that Clackler had an ulcer and prescribed her Dulcolax, Tums and Gas-Ex to relieve her abdominal pain. (PHS0083; PHS0104). On this same

day, Clackler tested positive for H. Pylori (an infection in the intestines). (Id.; PHS0304). However, the results of this test were later determined to be a false-positive test result. A false-positive test result is one that appears to detect a disease or condition when in fact it is not present.

56. On February 2, 2006, I evaluated Clackler and prescribed Flagyl and Tetracycline (which is an antibiotic used to fight bacteria and infections) to treat Clackler's presumed ulcer. (PHS0083).

57. On February 9 and 11, 2006, Clackler submitted sick call request forms, complaining of abdominal and back pain, swelling, nausea, vomiting and constipation. (PHS0127; PHS0128). At this time, Clackler was given Maalox and Pepto Bismol. (PHS0127; PHS0083).

58. On February 13, 2006, I ordered Clackler to continue taking Tetracycline and Flagyl, entered a prescription for Prilosec (which is used to reduce the amount of acid produced by the stomach), educated Clackler concerning her diet and scheduled Clackler to be evaluated by Dr. Williams for her ulcer. (PHS0067-0068; PHS0082; PHS0083).

59. On February 14, 2006, Clackler was evaluated by Dr. Williams, who adjusted Clackler's diet and continued her prescription for Prilosec. (PHS0066; PHS0081).

60. On February 22, 2006, March 9, 2006 and March 14, 2006, Clackler submitted sick call request forms complaining of abdominal and back pain and was subsequently evaluated and treated by Dr. Williams. (PHS0120-0125).

61. On March 20, 2006, Dr. Williams ordered Clackler to continue taking Flagyl and other acid suppressing medications. (PHS0081; PHS0103). Additionally, Dr. Williams prescribed Amoxicillin. (Id.).

62. In summation, Clackler has chronic constipation with laxative dependency. Clackler has never presented an “acute abdomen” (a sudden onset of intense abdominal pain) and has never been diagnosed with or treated for any type of bowel obstruction or any emergency situation regarding her gastrointestinal tract or bowel function.

63. I responded timely and appropriately to all of Clackler’s written requests for medical treatment. My decisions regarding Clackler’s medical treatment were based on my medical judgment at that time. I did not refuse to provide Clackler with medical treatment or ignore any of her complaints.

Further affiant saith not.

[Signature page to follow.]

Samuel Englehardt (M.D.)
Samuel Englehardt, M.D.

SWORN TO and SUBSCRIBED before this the 17 day of May, 2006

Lynn Lambert
Notary Public

(SEAL)

My Commission Expires: 8-14-2006